REMARKS

Claims 110-139, are pending in the present application. Claims 124, 125, and 130, have been amended. Support for this amendment appears throughout the specification, claims and drawings, as originally filed. No new matter has been added.

I. At page 2 of the Office Action, the Examiner approves the proposed drawing change and requires "A proper drawing correction or corrected drawings."

Responsive to the Examiner's requirement, a proper drawing correction will be filed in a Supplemental Response prior to the statutory bar date, along with any required petition for extension of time and appropriate fee.

II. At page 2 of the Office Action, claims 124 and 125, have been rejected under 35 USC §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner states that claims 124 and 125 each require a textured top and bottom surfaces where the surfaces are disposed parallel to the interfaces of the bone portions, and that since the graft has a wedge shape (an anterior height different from a posterior height), it is unclear how the top and bottom surfaces may both be parallel to the interfaces of the bone portions if the surfaces cannot be parallel to each other (as inherent from the wedge shape). In view of the following, this rejection is respectfully traversed.

Claims 124 and 125 have been amended to remove the language "and are disposed parallel to the interfaces of said bone portions." The claims as amended require top and bottom textured surfaces where the textured surfaces are opposing. It is submitted that the claims as amended are clear and definite within the meaning of 35 USC §112, second paragraph. Thus, the Examiner is respectfully requested to withdraw this rejection.

III. At page 3 of the Office Action, claims 110-139 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent No 6,200,347.

The Examiner states that the Terminal Disclaimer filed on 04/03/2002 does not comply with 37 CFR 1.321(b) and/or (c) because the disclaimer fee of $55.00 was not paid. It is submitted that the Examiner is in error. In support thereof, attached hereto please find a copy of both the Terminal Disclaimer and the Credit Card Payment Form filed on April 2, 2002. As can be seen, the Credit Card Payment Form authorizes payment of both the extension fee of $460.00 and the disclaimer fee of $55.00 which equates to a total of $515.00 dollars. In view of the foregoing evidence of payment, it is submitted that the filing of April 2, 2002 did comply with the requirements of 37 CFR 1.321(b) and/or (c). Accordingly, the Examiner is respectfully requested to withdraw this rejection.

IV. At page 4, of the Office Action, claims 117-119, have been rejected under 35 USC §102 as being anticipated by Boyce et al. '731.

The Examiner states that '731 teach a bone-derived implant 20 including alternating layers 22 and 23 of cortical bone demineralized to different degrees. The sources of the bone are preferably allogenic but may also include xenogenic sources. The Examiner states that the layers are bound together mechanically or with biocompatible adhesives. The Examiner states that the limitation requiring the pins to be perpendicular to an interface of the cortical bone portions, is considered to inherently be within the scope of the invention of '731 since '731 suggest the use of pins to mechanically fasten adjacent layers of the graft, without indicating a specific angle, and that therefore all angles from parallel to perpendicular are inherently included. In view of the following, this rejection is respectfully overcome.

Claim 117 has been amended to recite that the cortical bone portions are not demineralized. Claims 118 and 119 are directly or indirectly dependent on claim 117. '731 do not teach or suggest an implant including cortical bone portions that are not demineralized. Support for this amendment appears throughout the specification and claims as filed. '731 do not teach or suggest an implant including cortical bone that is not demineralized. No new matter has been added. Accordingly, the Examiner is respectfully requested to withdraw this rejection.

V. At pages 4 and 5 of the Office Action, claims 120/117-119, 133/117, 134/133/117, 136/120/117-119, and 139/134/133/117, 115, have been rejected under 35 USC §103 as being unpatentable over Boyce et al. '731 further in view of Gresser et al.

The Examiner states that '731 teach all of the limitations of the invention except particular dimensions and shapes recited, that the top and bottom surfaces include a plurality of continuous linear protrusions defining a saw-tooth pattern and that the graft includes a through-hole which entirely traverses the graft. The Examiner states that Gresser et al teach a resorbable interbody fusion device having a top and bottom surfaces 11 and 12 which include a plurality of serrations 16 to aid in anchoring the device to surrounding bone, and that the device includes through holes 18 for the introduction of autologous bone. The Examiner concludes that it would have been obvious to one of skill in the art at the time of the invention to have formed teeth on the top and bottom surfaces of the graft of '731 so as to improve its anchorage into surrounding bone and that It would also have been obvious to have provided through-holes in the '731 invention to allow for bone ingrowth. In view of the following, this rejection is respectfully traversed.

The rejected claims, as amended, all require that the cortical bone portions are not demineralized. '731 do not teach or suggest an implant including cortical bone portions that are not demineralized. In fact, '731 requires that the cortical bone portions be partially or fully demineralized. Gresser et al. do not cure the deficiencies of '731 since Gresser et al. also do not teach or suggest an implant including cortical bone portions that are not demineralized, as required by the present claims. In fact, Gresser et al. do not teach or suggest a bone implant. Rather, Gresser et al. require a synthetic, resorbable implant.

In view of the amendments to claims 117-119, it is submitted that nothing in '731 or Gresser et al. taken alone or together, render the claimed invention obvious within the meaning of 35 USC §103. Accordingly, the Examiner is respectfully requested to withdraw this rejection.

It is submitted that claims 110–139 are in condition for immediate allowance and early notice to that effect is respectfully requested. The Examiner is invited to contact the undersigned at her Spotsylvania, Virginia telephone number on any questions that may arise.

Respectfully submitted,
LIFENET

Susanne M. Hopkins
Attorney for Applicant
Registration no: 33,247

Date: August 28, 2002
LIFENET
5809 Ward Court
Virginia Beach, Virginia 23455
Phone: (540) 834-0000

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